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# The Classical Weekly

VOL. X

MONDAY, OCTOBER 23, 1916

No. 4

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# THE CLASSICAL WEEKLY

Entered as second-class matter November 18, 1907, at the Post Office, New York, N. Y., under the Act of Congress of March 1, 1879

VOL. X

NEW YORK, OCTOBER 23, 1916

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## DR. THOMPSON'S ADDRESS<sup>1</sup>

I am admonished, by the number of papers listed for this session of the Classical Association, to be brief. But I must not fail to point out the felicity of your assembling here at this time. The principles suggested by your name never and nowhere called more loudly for affirmation and illustration than here and to-day. I may say that you have met to sell the ground on which Hannibal is encamping, and to see that it sells for its full value in the land-market.

We are living in a time which threatens to banish the word 'liberal' from the vocabulary of education, and to stamp the dollar-mark on everything in School and College. I think I see, in this, one phase of the Socialist tendency to reduce the problems of society to the supply of food, clothing and lodging for the multitudes. Instead of meaning training for a larger humanity, a braver outlook toward the future, and a more joyful entrance upon our great heritage from the past, education, in Governor Russell's phrase, is to be preparation for earning a living rather than preparation for Life. The formative years are to be spent in acquiring deftness in the practice of some definite trade. Although Mr. Ford has shown how a man taken from the street can be trained to be worth a high wage in less than a year's time, year upon year is to be spent in imparting a similar training. For the sake of this the man is to forfeit the chance to learn his own human possibilities in mental development, and to become—as Mr. Lowell puts it—good company to himself.

We decline to accept an education limited to the environment in which a child finds himself, even though that should be made so large as to include the criminal courts and the Zoo. We decline to accept the daily newspaper and its 'current events' as a substitute for the great record called History, in which the heir of all the ages may read the story of the heroic self-sacrifice and the priceless wisdom with which our fathers built up a Christian civilization. We think he should have some acquaintance with such 'useless facts' as Thermopylae and Salamis, Clontarf and Morgarten, Waterloo and Gettysburg, that his

heart may beat quicker at the vision of what does honor to humanity. And we want him awake to the fact that there have been not only Peabodies and Carnegies, Edisons and Fords, but Socrates, Cato, Aelfred, Dante, Saint Louis, Schiller and Hugo. In fine, instead of growing up the ephemeral creature of his little day, his parish or his ward, we want him served heir to all the great memories, and the greater hopes of the future.

In proposing this we are acting upon the cherished and wholesome traditions of this and other Commonwealths, which laid their educational foundations in classical studies. It was indeed the Christian Church and its need of a learned clergy which brought the Classics to this new world, and supported liberal education until its fruits commended it to Commonwealths and to millionaires. As I sat beside the representative of the City of Glasgow in the Moseley Commission, at the public reception in this city, I asked him what British College he supposed to have exercised the greatest influence on the educational development of America. He replied that it must have been Emanuel College, Cambridge, which had trained the Puritan ministry of New England, and had made Harvard and Yale possible. I told him, "No, it was your University of Glasgow, which trained the Ulster ministers, who emigrated to this and the adjacent States. These men planted the Academy beside the Church wherever they found a home in America. In the States from the Delaware to the Mississippi we can trace to their direct or indirect influence the creation of higher Schools, Colleges and Universities; and it was to them that our Friends' Academy and our University of Pennsylvania owed their best teachers".

My attention was called to this by my revered teacher, Dr. George Allen, of our University, himself a native of Vermont and a graduate of its State University. He said, "We Yankees have had far too much credit as the schoolmasters of America. The indebtedness of the central colonies, and of the States which grew out of them, to what we call the Scotch-Irish settlers was very great. When I came here as a professor of Latin and Greek, it was with a sort of feeling that I was a foreign missionary on pagan ground. But I soon discovered that there was here a tradition of classical scholarship as vigorous and as sound as New England could show, and that my busi-

<sup>1</sup>These remarks were delivered, extemporaneously, as an Address of Welcome, at the Tenth Anniversary Meeting of The Classical Association of the Atlantic States, held in the Central High School, Philadelphia, on April 14, 1916. They were afterward reproduced from memory by Dr. Thompson. This version came too late for insertion in Volume 9.

ness was to adapt my teaching to its methods, and perhaps to improve upon them, but not ignore or destroy them".

Out of that immigration into these colonies from my native province the country derived a whole series of schoolmasters of the old sort, who familiarized successive generations with the felicities of Greek and Latin literature, and with that enthusiasm for the classic world which created the modern world of thought and of art. They were stern men, who believed in no royal road to learning, who held that it was good for a youth to apply himself to work which taxed his strength; and, when need was, they gave him bad marks, not on paper, for that was dear, but on his cuticle. Charles Thomson, afterwards Secretary of the Continental Congress, represents the first generation of those Ulster schoolmasters, and my very dear master, Dr. John Wylie Faires, may be said to have closed the succession.

So was it with us in those early decades of scanty resources and rude living, when the fathers of the Republic were struggling with

Rude Nature's thwarting might,

in the initiation of the great conquest of this continent to human use and service. Shall we renounce their high educational ideals in this time of our prosperity, and turn aside to plans whose finest results can be but a greater accumulation of wealth and diffusion of comfort? If so, we need to heed Dr. Bushnell's warning in his notable discourse, *Barbarism the First Danger* (1847), against the gravitation of America to the level of the Boer Republics, with a culture limited to the spelling-book and the newspaper.

CENTRAL HIGH SCHOOL,  
Philadelphia.

ROBERT THOMPSON.

## LEGISLATION AGAINST POLITICAL CLUBS DURING THE REPUBLIC

(Concluded from page 22)

The penalty for the crime of sodalicium seems to have been interdiction. It certainly involved expulsion from Rome, and apparently for life. This must be regarded as somewhat inferential, but it is shown to be almost a certainty, from two facts. In the first place, the penalty was heavier than that for bribery. This is seen by Cicero's argument that *Laterensis* chose to prosecute *Plancius* under the law of Crassus rather than under the law of bribery because the penalty was more severe. The law of Cicero on bribery, which was the law now in force, imposed upon conviction banishment for ten years<sup>86</sup>. A heavier penalty must have meant either a longer term of banishment, or banishment for the same length of time, combined with some other punishment. Mommsen at one time thought that the punishment inflicted was banishment for ten years, and that a fine was coupled with it<sup>87</sup>,

but later he came to the conclusion adopted by most scholars, that exile for life was the penalty prescribed<sup>88</sup>. Exile is the necessary inference from Cicero's words early in the speech for *Plancius*<sup>89</sup>, and the loss of property is included among the things that *Plancius* would endure if convicted<sup>90</sup>. But this should not be interpreted to mean that a fine would be inflicted, but rather that confiscation would follow exile as a matter of course. In the second place, and still more conclusive, are the statements already cited to the effect that the penalty was the same as that for *vis*. This means only *vis publica*, somewhat equivalent to the term 'rioting' as used in modern law, for *vis privata*, or assault and battery, was a private offense. It was against the charge of *vis publica* that Cicero defended Sulla in 62, and Caelius and Sestius in 56. The penalty for this crime is clearly stated to have been interdiction, which meant banishment for life, with the confiscation of property<sup>91</sup>.

The law of Crassus was a consular law, and therefore must have been preceded by a senatorial decree on the subject. If we knew the contents of the senatorial decree, or if we knew even the nature of the discussion by the Senate, we could form a more accurate estimate of the terms of the law of Crassus. Unfortunately this is not possible, for, although Cicero often mentions the discussion of the topic by the Senate, he speaks of but two points in the debate, namely, the penalty proposed and the manner in which the jury was to be selected<sup>92</sup>. During the year of this joint consulship, Pompey secured the enactment of a new law on the composition of juries, which was a kind of amendment to the Aurelian law, to the effect that, while juries should continue to be chosen from the three orders in accordance with the practice since the year 70, the panel for each case should be formed according to census rating, and it is very probable that it included a provision that the album should be published with the names of the members of each tribe arranged together, so that a jury could be made up on a partially tribal basis<sup>93</sup>. But the law of Pompey is subsequent to that of Crassus, and some scholars think that the discussion of sodalicium, which took place in the Senate in February, 56, must have preceded any thought on Pompey's part of a reconstruction of the jury lists. However, the whole matter must have been in the air, and it is very unnatural to suppose that the various discussions arose independently of one another, or that the proposals of Pompey and

<sup>86</sup>*Strafrecht*, 874; Greenidge, 425, with n. 5. Rein, 716, is in doubt whether the penalty in itself was heavier, or whether the severity consisted merely in the stricter rules of procedure.

<sup>87</sup>8: Tum enim magistratum non gerebat is, qui ceperat, si patres auctores non erant facti; nunc postulat a vobis, ut eius exitio, qui creatus est, iudicium populi Romani reprehendatis.

<sup>88</sup>79: agitur . . . Cn. Planci salus, patria, fortunae.

<sup>89</sup>Cicero, Sulla 89: vita erepta est superiore iudicio, nunc, ne corpus eiciatur, laboramus; *ibid.* 91: Quid enim erat mali, quod huic spoliato fama, honore, fortunis deesse videretur?; Phil. 1.23: Quid, quod obrogatur legibus Caesaris, quae iubent ei, qui de vi, itemque ei, qui maiestatis damnatus sit, aqua et igni interdici? Compare Sest. 146; Digest 48.6.10.2.

<sup>90</sup>Planc. 36, 37, 39, 41, 44, 45; Ad Q. Fr. 2.3.6.

<sup>91</sup>Zumpt, *Criminalrecht*, 11.2.352 ff.

<sup>86</sup>Cicero, Mur. 3, 5, 47, 89; Planc. 83; Dio Cassius, 37.29.

<sup>87</sup>Coll. 70.

those of Crassus, with their somewhat close resemblance, should have arisen without a mutual understanding. So it is now generally assumed that they were all linked together, and that what is known of the *senatus consultum* of 56, of the judiciary law of Pompey, and of the law of Crassus, may be considered as a related group, which helps to give an idea of the intent of the legislation against the political clubs.

The terms of the law of Crassus, so far as they can be discovered, are the following. An essential feature of it was the prohibition of the formation of organizations. There is no statement made, nor any indication, that the law forbade the continued existence of clubs which were already formed on the objectionable lines that were aimed at in the law, but it did forbid the creation of new ones. And yet there can be little doubt that it forbade the continuance of the old ones, or at least forbade them to use their influence in a political way. It is just possible that the prosecution of Messius was based upon the use of organizations created prior to the enactment of this law. But the important point in this connection is that the organization must be one formed in a tribe. It has been explained already that this was the natural method to pursue, if a person wished to create a machine of any kind. But it is necessary to mention it again, in order to distinguish between the illegal and the legal kinds of political clubs. Laterensis claimed that Plancius had formed a *coitio* with Plotius, in order that they might combine forces and win the election<sup>94</sup>. Such combinations of two candidates against a third had been known since the very beginning of the Republic<sup>95</sup>, but there is no intimation that this was regarded as illegal, or wrong in any way. Nor was the mere fact of the existence of a *coitio* the thing of which Laterensis complained; he complained rather that they had formed their *coitio* after each had promised support to another candidate. Plotius had first entered into a *coitio* with Pedius, and Plancius had formed one with Laterensis, but in the end neither of them lived up to his promises, but they themselves made a new combination<sup>96</sup>. Laterensis thinks that he has sufficient proof of his charge, but he uses it only as evidence that Plancius had a strong organization, and had won tribes which he traded with Plotius by means of bribery. He makes no charge that a *coitio* in itself was illegal.

A second point in the provisions of the law of Crassus was one forbidding a person to act as sequester, that is to say, one who performed the functions of a sequester in a political club could be prosecuted under this law. Laterensis claimed that Plancius was the sequester of the tribe Teretina<sup>97</sup>. This does not at all imply that the person who formed the organization neces-

sarily acted also the part of 'sequester,' or even at all commonly did so. In fact, if one had to judge of the activity of Plancius by this passage alone, it would be a natural inference that Plancius was not accused of being responsible for the formation of the club, but of being an active member of one. It does, however, dispose of a statement made by a scholiast, that only candidates for office could be prosecuted for *sodalitium*<sup>98</sup>. That would have been a most unreasonable provision, in view of the fact that even under the bribery law of Calpurnius, and undoubtedly also under the later law of Cicero, the distributors of money could be prosecuted<sup>99</sup>. The law of Crassus was certainly not more lenient in this respect.

A third feature of the law was the defining of certain acts that would prove the existence of an organization. Cicero taunted Laterensis with having devoted his attention to showing that Plancius was guilty of bribery, and of failing utterly to prove the things against which the law of Crassus was specifically directed. He challenged Laterensis to prove that Plancius had made an enrollment of the members of a tribe, had divided them into decuries, had been sequester, had promised money, or had distributed money<sup>100</sup>. And he claimed that, unless Laterensis could prove these things, he was not arguing on the law of Crassus at all. Such a statement can mean only that all these acts were forbidden. It has already been shown that the enrollment and division of tribesmen into decuries were probably done by the *magister collegii*, and that the other three acts were performed by the *sequestres* and the *divisores*. And yet there can be no doubt that Plancius was prosecuted as the head of the organization, so that the law must have provided for the prosecution of the head of the organization as being responsible for the acts of his subordinates. In other words, one who procured the criminal acts was held as a principal, and not as an accessory. This conforms to the principles of English and American law on corrupt practices and several other criminal offenses. But a further implication contained in the words of Cicero is that, since these acts were criminal in themselves, those who actually performed them were criminally guilty. Thus it follows that the subordinates also could be prosecuted. But this is only inferential from Cicero's statement, for there is no evidence that the prosecution of any subordinate officer in one of the organizations actually occurred. This may be because our information is incomplete, or it may be that the law was in operation for such a

<sup>94</sup>Planc. 53: 'dubitatis inquit 'quin coitio facta sit, cum tribus plerisque cum Plotio tulerit Plancius?'

<sup>95</sup>Livy 3.35, 7.32, 9.26; and many are known to have existed during Cicero's time.

<sup>96</sup>Planc. 54: et ais prioribus comitiis Aniensem a Plotio Pedio, Terentinam a Plancio tibi esse concessam.

<sup>97</sup>Planc. 38: cuius tu tribus (i. e. Teretinae) venditorem et corruptorem et sequestrem Plancium fuisse clamitas.

<sup>98</sup>Schol. Bob., p. 253: M. Licinius Crassus . . . pertulit, ut severissime quaereretur in eos candidatos, qui <sodales> sibi conciliassent, ut per illos pecuniam tribulibus disperirent ac sibi mutuo eadem suffragationis emptae praesidia communicarent. Clearly an object of *conciliassent* must be supplied, one which may serve as the antecedent to *illos*; *sodales*, *amicos*, *alios*, are suggestions that have been made.

<sup>99</sup>Asconius in Cornel. p. 75.

<sup>100</sup>Planc. 45: haec doce, haec profer, huc incumbere, Laterensis, decurias Plancium, conscripsisse, sequestrem fuisse, pronuntiasse, divisisse: tum mirabor te eis armis uti, quae tibi lex dabat, noluisse.

short time that by mere chance no prosecutions of this nature arose.

But the most striking feature of the law of Crassus was the remarkable method prescribed for the selection of jurors. The law of Aurelius Cotta of 70 B. C. stipulated that jurors were to be composed of the three orders, senators, equites, and tribuni aerarii. Pompey's law, of 55 B. C., did not change this, but prescribed a new system whereby the jurors for each case should be impaneled from the album of that year. In order to make Pompey's regulations effective, it was necessary that the jurors should be listed according to their tribes, a thing which possibly was done under the Aurelian Law. Of course a selection of jurors for a particular case, if made by tribes, must have been restricted to the two classes, equites and tribuni aerarii, for the number of senators in each tribe would not normally be even approximately the same. It would undoubtedly frequently happen that there was not a sufficient number of senators in a tribe to form a third part of one jury. There were probably about four hundred senators available for jury duty each year, and it is natural to assume that the same number of equites and tribuni aerarii would be selected, thus making an annual panel of about twelve hundred<sup>101</sup>. These, if selected tribally, would number about twelve of each class from each tribe.

The law of Pompey was passed perhaps a little later in the year than that of Crassus, but it shows what the situation in Rome was with reference to the jury system. One of the signs of the times in criminal procedure was the desire to secure juries that would be more severe, that is, more likely to bring in a verdict of guilty. The tendency toward strictness in this matter had been growing for three quarters of a century. The Acilian Law had permitted the defense to reject one-half the jurors proposed for the hearing of the case. Probably the Servilian Law on extortion allowed the rejection of seventy-five out of a total of one hundred and twenty-five<sup>102</sup>. But that was altogether too severe upon the defendant, for the reason that the prosecution chose the original total number, and, even after the large number of rejections, a jury might still be composed of those prejudiced against the defense. In the year 59 the tribune Vatinius introduced a different system, whereby the album of jurors was divided into sections, and three of these were chosen by the praetor, or by lot, after which each of the parties to the suit rejected one whole section, leaving the third to try the case<sup>103</sup>.

But Cicero complains that the law of Crassus was more severe than any of these, for in the case of Plancius

there was no opportunity for the rejection by the defense of a single member of the jury<sup>104</sup>. The method of selection was of such a character that the jury chosen to hear a case might well be called executioners rather than jurors<sup>105</sup>. Cicero makes this remark while actually pleading a case; so he qualifies it by showing that the jury in that case was not actually inspired by feelings hostile to the defense, although the prosecutor had intended it to be so. The great point of contrast between the law of Crassus and the earlier laws was that the prosecution had the privilege of naming four tribes out of which the jury was to be chosen, and the defense could reject one of these tribes in toto, but must submit to be tried by the jurors of the other three tribes<sup>106</sup>. The men of the four tribes nominated (*edere*) by the prosecution were called *editicii iudices*, the name given to jurors chosen, or nominated, in a special way<sup>107</sup>. The jurymen whose names appeared in the annual album *iudicum* (*iudices selecti*) were normally divided into decuries, composed of those chosen to hear each type of case during the year. From the names in each decury (*iudices delecti*)<sup>108</sup> those who were to hear a particular case were chosen. Cicero insists, several times, upon the great difference between *iudices delecti* and *iudices editicii*, such as were prescribed by the law of Crassus. The difference consisted in three things. First, the Licinian jury was chosen from four tribes rather than from the whole album. Second, the right of challenge did not exist. Third, the jurors were selected *ex omni populo*, and not in the ordinary way.

The four tribes selected by the prosecution were to be those in which activity for the defendant, or activity by him, was most noticeable. So Laterensis, in the case of Plancius, chose the Lemonia, the Oufentina, the Clustumina, and the Maecia. Cicero criticizes him sharply for his choice, for it could not be proved that there was any activity whatever for Plancius in the first three of them<sup>109</sup>. But there were two tribes which were closely associated with Plancius, and these

<sup>104</sup>Planc. 41: an vero nuper clarissimi cives nomen editicii iudicis non tulerunt, cum ex CXXV iudicibus, principibus equestris ordinis, V et LXX reus reiceret, L referret, omniaque potius permiscuerunt, quam ei legi condicionique parerent: nos neque ex delectis iudicibus, sed ex omni populo, neque editos ad reiciendum, sed ab accusatore constitutos iudices ita feremus, ut neminem reiciamus?

<sup>105</sup>Planc. 41: non enim, si aut Plancius ita vixit, ut offenderet sciens neminem, aut tu ita errasti, ut eos ederes imprudens, ut nos invito te tamen ad iudices, non ad carnifices veniremus, idcirco ista editio per se non acerba est.

<sup>106</sup>Planc. 36: neque enim quicquam aliud in hac lege nisi editicios iudices es secutus; quod genus iudiciorum si est aequum ulla in re nisi in hac tribuaria, non intellego quam ob rem senatus hoc uno in genere tribus edi voluerit ab accusatore neque eandem editionem transtulerit in ceteras causas. Compare Att. 4.15.9.

<sup>107</sup>Servius ad Verg. Ecl. 3.50: editicius est iudex quem una pars eligit. This definition may be too narrow, but it illustrates the probability of bias or prejudice.

<sup>108</sup>Strachan-Davidson, 2.109. This seems to fit the evidence better than the explanation of Mommsen, Coll. 65, Strafrecht, 215, that *iudices delecti* are those who actually tried a particular case, "left unchallenged by the prosecution". Compare Cicero, Rosc. Amer. 8, 151; Verr., Act. Pr. 52; Mur. 83; Sull. 92; Vat. 28. Zumpt, Criminalrecht, II.2.399, agrees with Mommsen.

<sup>109</sup>Planc. 38: quid Plancio cum Lemonia? quid cum Oufentina? quid cum Clustumina? nam Maeciam, non quae iudicaret, sed quae reiceretur esse voluisti.

<sup>101</sup>So Strachan-Davidson, 2.75 ff., agreeing practically with Mommsen and Greenidge.

<sup>102</sup>The view of Strachan-Davidson, 2.103 ff., is here adopted in preference to that of Mommsen, Coll. 63 ff. As the topic is only indirectly connected with the present main subject, the evidence is omitted.

<sup>103</sup>Cicero, In Vat. 27: et quoniam crebro usurpas legem te de alternis consiliis reiciendis tulisse. . . . This very brief and unsatisfactory statement is interpreted as in the text by Zumpt, Criminalrecht, II.2.291; Strachan-Davidson, 2.110; Mommsen, Strafrecht, 216; etc.

should have been chosen<sup>110</sup>. Therefore Laterensis broke the spirit of the law, if not its letter, in choosing the other three rather than these<sup>111</sup>. Plancius rejected the tribe called Maecia, as Laterensis expected. Why this was so cannot be told, but the only reason that can readily be assigned is that it was not friendly to Plancius. It may have been the tribe to which Laterensis belonged, or possibly it had given Plancius a very small vote at the election<sup>112</sup>.

The analysis made above of the provisions of the judiciary law of Pompey showed that, on the average, about ten names in each tribe would appear in the album of those of each class available for jury duty during the year. This would make a total of about thirty of each class in the three tribes, or a grand total of ninety. Whether the law of Crassus made provision for the reduction of this number is not stated. Cicero declared that in the case of Plancius he had no opportunity of rejection by challenge. But at the same time he said that in his last case he had challenged five, no doubt meaning five of each order, and they were rejected<sup>113</sup>. A scholiast says that the case tried immediately before that of Plancius was the case of Vatinius, and interprets the words of Cicero to mean that in some manner Laterensis had contrived to prevent the defense from exercising the privilege of challenge<sup>114</sup>. But it is not clear just what Laterensis did to deprive the defense of the privilege of challenge. Cicero says that in the case of Vatinius the challenge took place only *de consilii sententia*, that is, the praetor consulted with his consilium, and then allowed the challenge. The most natural inference is that for some reason the number of jurymen available in the three tribes sitting in that trial was unusually large, and a special ruling was made to reduce the jury to the normal size. Of course the defense would seize upon such an opportunity with eagerness, and an attorney might feel disposed to complain, in his next case, that his difficulties were greater now than in the former case. So there seems no reason for assuming that the right of challenge existed, and this accords with the general tendency toward severity in cases arising under the law of Crassus.

In addition to the hardship entailed upon the defendant through the choice of four tribes instead of jurymen

from the whole album, and the loss of the former right of challenge, Cicero points to a third hardship. This was that the jury was taken *ex omni populo*, and not merely *ex delectis iudicibus*, as in other courts. This can have a meaning only if the *delecti iudices*, the decury of one court, is contrasted with a larger, possibly different, set of men. But it can hardly be contrasted with the list in the album, for Cicero would have used the phrase *ex selectis iudicibus* in that case<sup>115</sup>. Nor can Cicero mean that from the whole list of the citizens of the four tribes the jury was selected at haphazard, for that would be thoroughly repugnant to all the principles of criminal procedure in Rome. The intermediate ground is left, that a list was made of all the citizens in the thirty-five tribes who were eligible for jury duty during that year, that is, those whose census rating was above the minimum required for ranking among the equites. The prosecutor could look over this list, and select four tribes containing the names of those he would choose to have act as jurymen in his case<sup>116</sup>. Provided the number in these tribes was larger than the average, a process of rejection would follow, as in the case of Vatinius; otherwise there was no opportunity for rejection, which happened to Plancius. Nor is there any reason to suppose that the senators were exempt from special choice, or that a third of the jury was composed of senators, irrespective of the manner of choosing the others. The juries in these cases could rarely be composed of the three classes in equal numbers.

There is no evidence whatever for the statement sometimes made<sup>117</sup>, that the choice of a presiding officer rested with the prosecution, or that the two parties to the suit could choose by mutual agreement any praetor they wished. It has been said that, if the choice rested with Laterensis, he would never have chosen C. Alfius Flavus to preside, for he was friendly to Cicero and Plancius<sup>118</sup>. But the same reasoning would apply if the presiding officer were to be chosen by both parties, for Laterensis would not have consented to allow Alfius to act, and the matter would have ended in a deadlock. Who appointed Alfius we have no means of knowing, but it can be said with certainty that Crassus in his law, or the Senate in making the law effective, provided some regular system for the selection of a president. The old days of irregularities and special commissions were over, and the Romans were in these very years

<sup>110</sup>Planc. 38: *tu autem, Laterensis, quas tribus edidisti? Terentinam, credo. Puit certe id aequum et certe expectatum est et fuit dignum constantia tua . . . At Voltiniam: libet enim tibi nescio quid etiam de illa tribu criminari; 43: Voltinia tribus ab hoc corrupta; Terentinam habuerat venalem.*

<sup>111</sup>Planc. 39: *dubitatis igitur, iudices, quin vos M. Laterensis suo iudicio, non ad sententiam legis, sed ad suam spem aliquam de civitate delegerit?*

<sup>112</sup>That the choice of tribes was based upon a principle such as this is clear from Planc. 40: *tu deligas ex omni populo aut amicos tuos aut inimicos meos aut denique eos, quos inexorabilis, quos inhumanos, quos crudelis existimes?*

<sup>113</sup>Planc. 40: *apud eosque me, ne quinque quidem reiectis, quod in proximo reo de consilii sententia constitutum est, cogas causam de fortunis omnibus dicere?*

<sup>114</sup>Schol. Bob. 262: *Iam de sodaliciis causam dixerat P. Vatinius eodem defendente M. Cicerone: cuius exemplo negat iniquitate Laterensis esse Plancio permissum quinque saltem iudices reicere, quo manifesta sit improbitas obstinate contentis inimici, ut reus innocens opprimatur conspiratione magis iniquorum iudicum quam criminis veritate convictus.*

<sup>115</sup>That the starting point was the annual jury-list is the opinion of Zumpt, *Criminalrecht*, 11.2.399; Mommsen, *Coll. 66, Strafrecht*, 215-217; Greenidge, 455.

<sup>116</sup>I think, but am not quite sure, that this is the opinion of Strachan-Davidson, 2.109. "What, then, is the meaning of *ex omni populo*? I believe it to be simply this, that under the *lex Aurelia* the whole of what the State had to show in the way of jurors for the year was published by the praetor urbanus in a single announcement. A section of this document (such as was each tribal list) might well be described as a haphazard slice of the Roman People,

<sup>117</sup>E. g. by Holden, in his edition of *Pro Plancio*, Introduction, page xlv, §32.

<sup>118</sup>Planc. 43: *et, si quaesitor huic edendus fuisset, quem tandem potius quam hunc C. Alfium, quem habet, cui notissimus esse debet, vicinum, tribulem, gravissimum hominem iustissimumque edidisset? Ad Q. Pr. 3.3: quaesitor gravis et firmus Alfius.*

endeavoring to make their criminal procedure regular and stable; so it can be confidently assumed that no such license as a choice of president by the two factions, or, greater license still, by one of them, was allowed to exist.

The law of Crassus was very severe in the penalties it prescribed, and very strict against the defendant in its procedure, so that it is surprising that only two convictions occurred in the five cases of which we have knowledge. The short life of the law is not easy to explain, except through the rapidly growing influence of Caesar. His candidates were so regularly chosen to office (and apparently they did not find it necessary to resort to illegal methods) that the law was not applied. None was ready to challenge the election of a nominee of Caesar.

DARTMOUTH COLLEGE.

R. W. HUSBAND.

### A NEW GOD

That the Romans were very much alive, that, when occasion called for it, they not only did joke, but keenly appreciated a joke, are, in general, facts far removed from the student's ken<sup>1</sup>. But, why should he be blamed for his lamentable ignorance on this subject? What commentator on Caesar ever called his attention to the statement of that great judge of literary values, Cicero, that 'in my opinion Caesar as a wit far surpasses all other men' (De Oratore 2.216)? What editor in treating the character of Cicero has considered it worth while to mention the fact that the great orator dearly loved his joke? The student of the fiery Orations against Catiline could hardly be censured for feeling that Cicero never laughed, unless he had been told that on one occasion Cicero not only laughed, but even 'split his sides with laughter' (the Latin is even stronger, Ad Quintum Fratrem 2.82 ego risu conrui), and that he began a letter to his brother (Ad Quintum Fratrem 2.11.1) by telling how greatly he was pleased because his brother was hilario animo et prompto ad iocandum. From such quotations as these, to say nothing of many others that could be cited, one would naturally infer that Cicero would have made some mention of the God of laughter, Risus, had he known of the existence of such a god. However, so far as we know, but one writer, Apuleius, refers to Risus as a god<sup>2</sup>. Apuleius (Metamorphoses 3.11) speaks of a town named Hypata, at the foot of Mt. Oeta, as splendidissima et unica Thessaliae<sup>3</sup>.

<sup>1</sup>It is further to be remarked that the authorities he is likely to consult (Smith, Keightley, and even Preller and Wissowa) are silent regarding the god discussed in the present paper.

<sup>2</sup>Reference may be made here to an interesting paper on Roman jesting, by Professor Irene Nye, entitled *Humor Repeats Itself*, The Classical Journal, 9.154-164. C. K.]

<sup>3</sup>Gellius, Noctes Atticae 1.24.3, quotes the statement of Varro that at the death of Plautus Comedia luget, Risus, Ludus, Iocusque et Numeri innumeri conlacrimarunt. If one of these is to be regarded as a deity, all are. All are simply personifications, not deifications, and are like the personification of Iocus in Plautus, Bacchides 116, and Horace, Carmina 1.2.34.

<sup>4</sup>It is not so surprising that this town in Thessaly should have a god of laughter, Risus, when it is remembered that the Greeks had a similar god, Γέλιος. In Sparta, we are told, there was a temple for his worship and a statue in his honor, erected by Lycurgus. Who ever thinks of that stern lawgiver as laughing?

civitas in which there was a god Risus. Elsewhere (2.31) he states that the worship of Risus dates a primis cunabulis huius urbis. From these two passages we learn what this god does for the faithful: iste deus auctorem et actorem suum propitius ubique comitabitur amanter nec umquam patietur ut ex animo doleas, sed frontem serena venustate laetabit adsidue. To insure winning the blessings this god can bestow, you must approach him in the proper manner: omnem de tuo pectore praesentem tristitudinem mitte et angorem animi depelle. One could not honor the god better than by thinking up some good joke, aliquid de proprio lepore laetificum, for by this means magis pleniusque tanto numini litamus. When you worship him, you must bibere solita Risui.

If you have neglected his worship, or have incurred his ill will in any way, set in operation the proper remedial machinery to regain the good will of the god: sanctissimum deum Risum hilario atque gaudiali ritu propitiemus. If you would enjoy the beneficent ministrations of this god, his hierophant would say: Cras rideat qui numquam risit quique risit cras rideat!

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### REVIEWS

*Deliverance: The Freeing of the Spirit in the Ancient World.* By Henry Osborn Taylor. New York: The Macmillan Co. (1915). Pp. 294. \$1.25.

To criticize a book by Dr. Taylor would be a rather profitless task. He has already written two works of two volumes each, *Ancient Ideals: A Study of Intellectual and Spiritual Growth from Early Times to the Establishment of Christianity*, and *The Mediaeval mind*. Both works have taken high rank as logically excogitated and lucidly expressed expositions of the philosophy and history of thought begot by religious emotion. A third book, entitled *The Classical Heritage of the Middle Ages*, and, finally, *Deliverance*, the work under review, would seem to be by-products from the mass of material gathered for the two larger works.

*Deliverance*, in the words of Dr. Taylor, is the "adjustment, nay, rather the assurance, and indeed salvation" for which the ancient world sought. In twelve chapters the author takes up one after another the religions of the Orient, the philosophies of Greece and Rome, the arrival, the struggle, and the triumph of Christianity through Jesus, Paul, and Augustine, coming, one must admit, very close to making Augustine the protagonist of his drama.

It would have been strange if the study and exposition in a more formal way of the fears and hopes of the ancients had not led an earnest and thoughtful man like Dr. Taylor to set down in a more intimate and untrammelled fashion

the ways in which our spiritual ancestors of all times and countries adjusted themselves to the fears and hopes of their natures, thus reaching a freedom of

action in which they accomplished their lives; or, it may be, did but find peace.

The author reviews briefly Chaldaea and Egypt. He discovers in Mesopotamia neither "a religion, a philosophy, or an ethical scheme that could lead the human spirit to freedom or peace", but in Egypt he finds in the symbolical and pictorial *ménage* of the dead Pharaohs an expression of a belief in life after death which helped to free mortals from fear of the unknown. It is true that the current belief seems to imply that the same caste condition was kept after death, but it had two comforting elements: any after-life was better than nothingness, and the better the Pharaoh the better the after-life for his ministers or his slaves.

The two chapters on China and India seem to the reviewer to have been written with great sympathy and care, but the basic idea of the one, Duty, and that of the other, the Annihilation of Individuality, will gain scant understanding in the Occidental mind. The *vita activa* of Confucius seems little more than a meticulously minute conformity to immemorial ceremonial, and the *vita contemplativa* reaction embodied by Lao Tzu only arrived, by a slightly different conception of the *Tao*, or Path, at virtue and character of a wholly passive, even quietistic sort. The Indian adjustment adds temperament to thought, for in one mood the Indians abhorred change, in another stability. The Absolute All-One of the Brahman and the Nought of the Buddhist are at opposite poles of thought and yet when attained are hardly distinguishable. The transmigration of souls, which we always attach to the Indian system of belief, is nothing more than their metaphysical solution of the way the indestructible element in man, which outlives his mortal clay but which needs pain or effacement or discipline throughout great periods of time, arrives at the point of ineffable rest and contentment, but, sadly enough, arrives with its power of sensation gone. But the idea of escape from the sorrows of the world is clearly seen in this Indian system of religious metaphysics, and there is insistence that a man can and must work out his own salvation.

With Zarathushtra and the Hebrew prophets we leave the passivists and come to the "fighting faiths". Zarathushtra, or Zoroaster, to win peace "required a god who could satisfy his intellect and moral consciousness". This god was Mazda, to whom he turned first in reflection and prayer, and to whom in belief of a divine call he consecrated his energies. But Zarathushtra's adjustment "was not peace, but freedom to fight for the faith in which he trusted". There is a lofty conception in his dualistic system of good and evil, and the spirituality and assurance of faith mark an advance in spiritual adjustment.

The chapter on the prophets of Israel is a catalogue of hopes and promises based on two distinct ideas concerning the redemption and restoration of Israel. The Roman legions laid the ghost of Jewish temporal

dominion; Christ was the fruit of Jewish religious fervor and spiritual regeneration. The Jews delivered the world but not themselves from bondage.

In Greek poetry Dr. Taylor finds the new adjustment to be that of the "heroic intelligence"; in Greek philosophy he finds it to be a

contentment springing from investigation and thought upon the world's origin and laws, rising with Plato and Aristotle to the sublimest satisfaction of consummate intellectual appetite, and narrowing later to a direct desire for peace of soul.

The chapter entitled Intermediaries is one of the best in the book. In it the author leads the reader through the self-reliant adjustment of Stoicism, through the highly ideal and the *carpe diem* manifestations of Epicureanism, the orgiastic rites of Cybele, the solar and terrestrial mysteries and the astral fatalism of Egypt, Syria, and Persia, through the philosophic-religious adjustment of Neoplatonism, and finally through the dialectic heterodoxies of Gnosticism, Arianism, and Manichaeism; all of them represent endeavors of mankind "to adjust himself with the divine and gain its support".

The whole book works up to the deliverance which comes through Christ. His adjustment, assurance, and salvation consummate themselves "in the life of God and in the salvation of men, through the divine love and the imparting of life through love's sanctifying truth". The chapters on Paul and Augustine elaborate the Christian adjustment, that deliverance which is the promise of Eternal Life. That is the *summum bonum*, "the perfect end, the peace of God".

The last chapter, "The Arrows are beyond Thee", is a resumé of the whole book. It emphasizes the innate need of man for peace and happiness, his endeavors towards, and his attainments of, those ends. In all cases faith and works have been of great avail.

The entire book is quiet and reverent in tone, and seems to imply that the Christian adjustment has touched the *meta ultima*. The undertone of discontent that the reviewer seems to hear may perhaps disquiet the eternal pacifist, but should only be a Tyrtæan melody to the militant.

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RALPH VAN DEMAN MAGOFFIN.

Greek and Roman Portraits. By Dr. Anton Hekler.

New York: G. P. Putnam's Sons (1912). Pp. xliii + 335. Originally \$7.50. Special Price, \$2.50.

Interest in the literary or mechanical productions of an individual is always increased, whether by way of approval or disapproval, through acquaintance with the personality of the author. A book of merit published anonymously arouses intense curiosity as to the identity of the writer, as conversely the works of a famous author are expectantly awaited for the revelations they may give of a noted individuality. Man expresses himself in his works; knowledge of the man connotes a better understanding of the works,

as familiarity with the works provides a basis for the interpretation of the man. The world has been searched again and again for every scrap of information on the life of Shakespeare, and each portrait with a claim to approximate genuineness is greatly valued. The importance of injecting the personality of the author into the works of the Greeks and the Romans has long been recognized, even though Phidias may have been punished for putting his portrait on the shield of the Parthenos; and on the literary side as early as the fourth century Aristotle did not scorn to write books on the lives of poets and philosophers, which undoubtedly served as models for the great output of such literature by the Alexandrian schoolmen.

It is a truism to state that the features of an individual furnish the key to his character, yet modern interest in the subject of Greek and Roman portraits is a comparatively recent development, as is indicated by the bibliography on antique portraits published by Dr. Hekler on page xliii. Since 1891, however, the beautiful plates issued by Brunn, Arndt and Bruckmann have been appearing periodically, and with the 970 numbers thus far published offer a wealth of material for acquaintance and familiarity with the features of Greeks and Romans, men and women, known and unknown, of all ranks and classes. On the basis of this expensive, monumental work, with a generous use of other sources, Dr. Hekler has made a selection of 311 plates, showing in all 518 illustrations. The reproductions are good, the size is convenient, and the cost is low, so that classical teachers should acquire this book and use the illustrations freely in class-room work.

The Introduction discusses the history of the development of the art of portraiture from its inception with the representations of types among the early Greeks, through the gradual emergence of the portrayal of individualistic traits, usually of an ennobled and beautified character, at the end of the fifth and the beginning of the fourth century, to the triumph of the accurate representation of nature after the time of Alexander the Great, under the influence of the works of Lysippos. Then follows in section VI (page xxv) a statement of the differences between the Greek and the Roman conception of the art. The important factors in the Roman interpretation of portraiture were the "ethical vigour and the sober earnestness of the expression", while the Greeks rather emphasized the spiritual and intellectual elements, but "the Roman portrait is directly related to the Greek, there is no breach of continuity, but a perfectly organic development". Among the Romans two main periods are indicated, with the division falling in the Flavian-Trajan era, which was distinguished from the earlier period by the increased size of the busts and by greater "vitality" and "directness" of expression.

The substance of this introductory outline of the development of portraiture is satisfactory, but the

style in which it is written is complicated and cumbersome. The book is a translation, of which the original is *Die Bildniskunst der Griechen und Römer*, 311 Tafeln mit 518 Abbildungen und 19 Textillustrationen, herausgegeben von Anton Hekler (Stuttgart, Verlag von Julius Hoffman, 1912). In spite of the name of G. P. Putnam's Sons on the title page the English edition also was printed in Stuttgart, which explains, though it does not excuse, the frequent errors in English forms and spelling. Nowhere is it stated that the book is a translation, nor is mention anywhere made of the translator: so it must be assumed that the author himself is responsible for the English version, which obviously could not have been written by anyone native to the English tongue. On every page may be found specimens of this foreign English, of which a few examples are here quoted: xiii, "a peaceful architectonic feeling informs the whole structure of the head" ("welch beruhigendes architektonisches Gefühl im Aufbau des ganzen Gesichtes!"); xxix, "the thick, fleshy cheeks, and the well-kept hair arranged in a roll over the forehead, are treated with a laconic, conscientious dryness and tightness" ("die fleischigen, dicken Wangen und die sauberen, ordentlich gekämmten Haare mit dem breiten Haarknoten über der Stirne sind mit knapper, trockener Sorgfältigkeit behandelt!"); xxx, "the academic subtlety and conscientious dryness of the execution agree admirably with the physical characteristics" ("zu dieser psychischen Charakteristik passt die akademische Feinheit und gewissenhafte Trockenheit der künstlerischen Ausführung vorzüglich!"); xxxi, "the curt, conscientious dryness of the modelling enhances the poignant impressiveness of the work" ("die knappe, gewissenhafte Trockenheit des Formenvortrags verstärkt noch den tiefgehenden Eindruck"). These illustrations could be matched from almost every page, but it is useless to cite additional examples, as it is superfluous to mention any of the innumerable instances of incorrect and incomprehensible English in the use of single words and phrases.

Attention, however, must be called to another serious defect of the work, that is, the lack of a general index. At the end of the book is given a list of the plates, with a very brief statement in each case, comprising chiefly the publications where the statues cited have appeared; following this list and concluding the book is an index of places where the sculptures are at present located. There is thus no means furnished for finding readily a specific portrait that may be desired. But in spite of these criticisms the fact remains that the heads are here reproduced in a cheap accessible form and that the plates are good, and these are the most essential qualities demanded of a work on Greek and Roman portraits.

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Printed by W. F. Humphrey, 300 Pulteney St., Geneva, N. Y.

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